

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
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FM AMEMBASSY BONN
TO SECSTATE WASHDC 0553
USMISSION USBERLIN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO

C O N F I D E N T I A L BONN 13080

E.O. 11652: GDS
TAGS: PFOR, BQG
SUBJECT: VISIT TO BERLIN OF FRG INTERIOR MINISTER

REFS: (A) USBER 2054; (B) BONN 12830;
(C) 76 USBER 2161; (D) 76 BONN 16015

1. THE TEXT OF THE SPEECH BY INTERIOR MINISTER
MAIHOFFER AT THE INDUCTION OF OBERBUNDESANWALT FRAUEN-
KNECHT AT THE FEDERAL ADMINISTRATIVE COURT SUGGESTS
THAT MAIHOFFER PERFORMED MORE THAN A PURELY CEREMONIAL
FUNCTION, I.E. HE HANDED OVER TO FRAUENKNECHT THE
ERNENNUNGSURKUNDE (LETTER OF APPOINTMENT) FROM
PRESIDENT SCHEEL. WE HAVE INQUIRED OF A GOVERNMENT
ATTORNEY HERE WHO HAS INFORMED US THAT, ACCORDING TO
HIS UNDERSTANDING OF THE BUNDESBEAMTENGESETZ (FEDERAL
LAW REGARDING OFFICIALS), AN APPOINTMENT OR ADVANCEMENT
BECOMES LEGALLY EFFECTIVE ONLY WHEN THE PERSON
DESIGNATED RECEIVES THE LETTER OF APPOINTMENT. FOR
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THAT REASON, THERE IS ALWAYS A RECEIPT ATTACHED TO THE
DOCUMENT WHICH THE PERSON IN QUESTION IS ASKED TO
AND EXPECTED TO SIGN. HE SAID THAT HE BELIEVES THE
DELIVERY OF THE DOCUMENT WAS NOT CEREMONIAL ONLY BUT
CONSTITUTED A LEGALLY NECESSARY PART OF THE APPOINTMENT.

2. OUR SOURCE REFERRED US TO SECTION 6 OF THE

BUNDESBEAMTENGESETZ WHICH PROVIDES THAT A LETTER OF APPOINTMENT IS NECESSARY, E.G. FOR THE INITIAL INVESTITURE IN OFFICE OR INVESTITURE IN ANOTHER OFFICE WITH ANOTHER FINAL BASIC SALARY (ENDGRUNDGEHALT) AND ANOTHER POSITION CLASSIFICATION (AMTSBEZEICHNUNG). IN EITHER CASE, THE APPOINTMENT TAKES PLACE "...THROUGH THE HANDING OVER OF THE LETTER OF APPOINTMENT."

3. COMMENT: THIS IS OF COURSE WHAT HAPPENED ON A SIMILAR OCCASION LAST YEAR WHEN JUSTICE MINISTER VOGEL'S PRESENCE IN BERLIN AND THE HANDING OVER OF A LETTER OF APPOINTMENT TO THE PRESIDENT OF THE FEDERAL ADMINISTRATIVE COURT OCCASIONED A SOVIET PROTEST. IF WHAT WE HAVE BEEN TOLD AND HAVE READ ABOUT THE BUNDESBEAMTENGESETZ IS CORRECT, AND IF THE LETTER OF APPOINTMENT WAS REQUIRED IN THIS CASE, THEN LAST YEAR'S REPLY TO THE SOVIET PROTEST, I.E. THAT THE ACT WAS OF A "CEREMONIAL NATURE WITH NO LEGAL EFFECT" MAY HAVE TO BE RECONSIDERED IF WE HAVE TO ANSWER A SOVIET PROTEST ON MAIHOFFER. AT AN APPROPRIATE TIME, WE PROPOSE TO RAISE THIS IN THE BONN GROUP BUT ANY COMMENTS USBER MIGHT OFFER WOULD BE WELCOME. STOESEL

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Disposition Approved on Date:
Disposition Case Number: n/a
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Disposition Date: 22 May 2009
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